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Supreme Court of the United States

OCTOBER TERM, 1952

No. 502

ATLANTIC COAST LINE RAILROAD COMPANY,
Petitioner, and Appellant Below,

v.

THE STATE OF SOUTH CAROLINA, Ex Relatione THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, and CHARLES A. RICE, J. C. DARBY, JOHN C. CONEY, WINCHESTER SMITH, F. B. HINES, EDWARD WIMBERLY, and RUFUS M. NEWTON as Members of and Constituting THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, and JOHN M. DANIEL, as ATTORNEY GENERAL OF SOUTH CAROLINA, and THE CITY COUNCIL OF CHARLESTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (INCLUDING BRIEF IN SUPPORT)

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WILMINGTON PRINTING COMPANY, WILMINGTON, N. C.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (INCLUDING BRIEF IN SUPPORT)

Petitioner, Atlantic Coast Line Railroad Company, prays that a writ of certiorari issue to review a judgment of the Supreme Court of the State of South Carolina entered in this proceeding on September 5, 1952; petition for rehearing denied on Sept. 25, 1952.

OPINION BELOW

The opinion of the Supreme Court of South Carolina is reported in 72 S. E. 2d 438. A copy of it will be seen at page 583 of the transcript of record.

JURISDICTION.

The judgment of the Supreme Court of South Carolina was entered on September 5, 1952, and a petition for rehearing duly filed was denied on September 25, 1952.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), providing that final judgments entered by the highest court of a state in which a decision may be had, could be reviewed by the Supreme Court by writ of certiorari, where any right is especially set up or claimed under the Constitution or statutes of the United States.

The judgment complained of affirmed a decision of the Court of Common Pleas for Charleston County, S. C., granting a writ of mandamus to enforce compliance with an order of the Public Service Commission of South Carolina, which latter order directed and required petitioner and Southern Railway Company "to forthwith rebuild their passenger station building in the City of Charleston, South Carolina, on the site of the station building which burned January 10, 1947, and thereafter to inaugurate passenger train service thereto and therefrom" (Rec. p. 15-30).

The federal questions sought to the reviewed were raised by motion and answer filed by petitioner in the proceedings before the Public Service Commission of South Carolina (Rec. p. 11), and were decided adversely to the petitioner by that Commission in its order No. 7271 (Rec.p.15). They were raised again in the Court of Common Pleas in petitioner's return to the rule to show cause why the writ of mandamus should not issue (Rec. p. 103), and were decided adversely to the petitioner by the judgment of that court entered February 10, 1951 (Rec. p. 130). They were again raised by exceptions filed by petitioner in the Supreme Court of South Carolina (Rec. p. 577), and were decided adversely to the petitioner by that court by its judgment entered September 5, 1952 (Rec. p. 583).

The judgment complained of adjudicates against petitioner substantial and important rights claimed under the statutes and Constitution of the United States, and the Supreme Court of the United States has jurisdiction of the case.

QUESTIONS PRESENTED

The questions presented, which, among other things, reveal the need for a sound demarcation or adjustment of the respective jurisdictions of state commissions and the Interstate Commerce Commission in the matter of the construction of expensive passenger stations, are:

1. Whether the state authorities of South Carolina may require the restoration of an expensive union passenger station destroyed by fire in 1947, which necessitates operation under trackage rights by one of the tenant lines over the main line of the other, without first obtaining the approval of the Interstate Commerce Commission.

2. Whether, under the Commerce and Due Process Clauses of the Federal Constitution, the state authorities of South Carolina can compel the rebuilding by petitioner and Southern Railway at an estimated minimum cost of $400,000 of a union passenger station in the City of Charleston, South Carolina, which was destroyed by fire in the year 1947, in view of the fact that petitioner operates and maintains within approximately 6 miles of the site of the burned station, a separate passenger station of its own which is adequate and sufficient to serve, and does adequately and sufficiently serve the public convenience and necessity of the Charleston area.

3. Whether the South Carolina state authorities can compel petitioner to operate interstate passenger trains into and out of such rebuilt union station, there being, by the authority and approval of the South Carolina Public Service Com-

mission, no intrastate trains operated by the petitioner to or from that site.

4. Whether an order of the State Commission requiring the inauguration of passenger train service to and from the site of said station is valid and constitutional where that issue was not before the Commission and no evidence was taken by the Commission to show what, if any, service was needed, or the practicability of operating said service under modern conditions.

STATUTES INVOLVED.

The pertinent statutory provisions are Sections 1(18)-(21), 3(5), 5(2), and 5(4), of the Interstate Commerce Act, Title 49 U.S.C. Sections 1(18)-(21), 3(5), 5(2), and 5(4). These statutes are printed in the Appendix, pp. i-vii.

STATEMENT.

Petitioner and Southern Railway Company for many years operated passenger train service, interstate and intrastate, to and from Charleston, S. C., and until January 10, 1947, afforded passenger station facilities at Columbus and Bay Streets in the City of Charleston, through the Charleston Union Station Company as their jointly owned agency and instrumentality.

Petitioner also maintains, and has maintained for a number of years, a separate passenger station known as "North Station", located outside of the corporate limits of the city about six miles from the site of the old station, which also serves the City of Charleston.

Petitioner's main line tracks extend down into Charleston and connect with the trackage of the Union Station at the site of the passenger station. Southern's line does not reach the station and in order to gain access thereto it has operated over

the main line of petitioner for approximately two miles under a trackage agreement between petitioner and Southern.

The Union Station was destroyed by fire on January 10, 1947. At that time petitioner's only passenger trains using that station were trains Nos. 80 northbound, and 89 southbound, which operated interstate between Richmond, Va., and Jacksonville, Fla., trains Nos. 77 southbound, and 78 northbound, which operated interstate between Richmond, Va., and Savannah, Ga., and trains Nos. 52 and 53, which operated intrastate between Sumter, S. C. and Charleston, S. C. All other Coast Line passenger trains, namely, trains Nos. 375, 376, 75, 76, 1, 2, 7, 8, 91 and 92, which served the Charleston area, used the North Station and did not enter the Union Station. (Rec. p. 564).

In August 1947 petitioner's interstate trains Nos. 80 and 89, which operated between Richmond and Jacksonville and formerly used the downtown station were discontinued south of Florence, S. C., and no longer operate to and from Charleston. On July 11, 1950, petitioner's intrastate trains Nos. 52 and 53, which operated between Sumter and Charleston and formerly used the downtown station were discontinued pursuant to authority of the Public Service Commission due to the lack of patronage and the expense of operating those trains (Rec. p. 51). Of the trains which formerly used the downtown station at the time of the fire in 1947 only interstate trains Nos. 77 and 78, operating between Richmond and Savannah, are in operation. Those trains now use petitioner's North Station. (Rec. p. 564).

Southern Railway operates one interstate passenger train into and out of Charleston and no intrastate trains (Rec. p. 559, 576). Upon destruction of the Union Station in 1947, it established temporary passenger facilities on its property in another section of the city, and it alleges that it is ready and willing to establish adequate passenger station facilities on prop-

erty owned by it on or near Ann Street in said city. (Rec. p. 540). By an instrument dated September 29, 1947, it cancelled its trackage agreement with Coast Line covering the use of the latter's tracks to reach the Union Station, effective Jan. 25, 1947, and since that time has not used the Union Station. (Rec. p. 529).

The State Commission, after hearing, directed petitioner and Southern Railway to rebuild the Union Station on the site of the old building, and to inaugurate passenger train service thereto and therefrom (Rec. p. 29).

Evidence introduced before the lower court indicated that based upon the present day costs, the rebuilding of the station in accordance with the former plans and specifications would amount to $811,454, but that by use of some of the old foundation and undamaged parts of the building, the minimum cost would be around $400,000 (Rec. p. 562). The evidence before the lower court also shows that for the year preceding the fire the operating expenses of the Charleston Union Station amounted to $145,414.85 (Rec. p. 568), and that in addition to the cost of operating and maintaining the station itself, it would cost petitioner an additional amount of $7,088.30 per annum for each train operated into and out of the old station site (Rec. p. 567).

The evidence before the lower court showed that the passenger trains which formerly used the downtown station left the main line at North Charleston and ran down to a "Wye" track switch, a distance of 5.8 miles, turned around the "Wye" to turn the train, and backed into the station tracks. This method of operation was necessary so that the train would be in regular order with engine on head end of train when the train departed from the station on the outbound trip. The trip into and out of the union station added thirteen miles to the trips of Trains 77, 78, 80, and 89, and approximately thirty minutes to the schedules of trains 77 and 78, and forty minutes to the schedules of trains 80 and 89 (Rec. p. 566). Evi-

dence introduced in the lower court showed also that because of the length of petitioner's modern passenger trains and of the limited trackage facilities at the union station site, none of the passenger trains serving the Charleston area presently operated by petitioner, except trains 77 and 78, are of such short length as will permit of their operation into and out of the Charleston Union station (Rec. p. 566).

SPECIFICATION OF ERRORS URGED.

The Supreme Court of South Carolina erred:

(1) In holding that the state authorities of South Carolina could require the construction of the Union Passenger Station without first obtaining the approval of the Interstate Commerce Commission.

(2) In holding that the state authorities could compel the rebuilding by petitioner and Southern Railway of the said Union Passenger Station despite the fact that petitioner operates and maintains a separate passenger station of its own which is now adequately and sufficiently serving the public convenience and necessity of the Charleston area.

(3) In holding that the South Carolina state authorities could compel petitioner to operate interstate passenger trains into and out of said Union Passenger Station.

(4) In affirming the judgment of the lower court.

REASONS FOR GRANTING THE WRIT.

Question (1)

The Conflict of Jurisdiction between the State Commission and the Interstate Commerce Commission.

The judgment complained of is not in accord with the decisions of this Court in the so-called Los Angeles Passenger

Station Cases, *Railroad Commission of the State of California v. So. P. R. Co. et al.*, 264 U. S. 331, 68 L. ed. 713 (1924); *Interstate Commerce Commission v. U. S.*, 280 U. S. 52, 74 L. ed. 163 (1929); and *A. T. & S. F. Ry. Co. v. Railroad Commission of California*, 283 U. S. 380, 75 L. ed. 1128 (1931). In the first Los Angeles case the Supreme Court held that the Railroad Commission of California could not force the construction of a union station at Los Angeles involving large expenditures of money and the relocation of tracks unless and until the Interstate Commerce Commission issued an appropriate certificate under paragraphs (18)-(21) of Section 1 of the Interstate Commerce Act. The Court said:

> "We think, however, that means of control over installation of such new union station for interstate carriers is given to the Interstate Commerce Commission under amended paragraphs (18) to (21) or Section 402." (68 L. ed. at page 718).

The order of the South Carolina Commission is a joint order addressed to petitioner and Southern Railway requiring them to rebuild their union station at the site of the former union station which was destroyed by fire on January 10, 1947, and to inaugurate passenger train service thereto and therefrom.

The minimum cost of constructing the new union station is estimated by the petitioner to amount to $400,000.

The site of the former passenger station is served only by the line of petitioner. Southern Railway, in order to reach the site, has operated over the line of the petitioner under a trackage agreement pursuant to which the Southern was granted trackage rights "over the line of double track railway of the Coast Line" from a point of connection of the two lines north of Magnolia Avenue, to the station site, a distance of 11,487 feet "for the purpose of running thereon the passenger trains and passenger engines of the Southern Railway" (Rec. pp. 501, 513). That trackage agreement was terminated effective

January 25, 1947, by mutual consent of the parties in a written agreement dated September 29, 1947 (Rec. p. 529) and Southern has not operated over the trackage since that date, In order now for Southern to reach the station it must either construct its own line or obtain the right to use petitioner's line. The latter would entail an operation over the main line of petitioners for a distance of 2.2 miles.

The only point of difference, except perhaps one of degree, between the Los Angeles Passenger Case and the instant case is that whereas the former involved questions dealing with the construction and abandonment of tracks to serve the station, the instant case involves an operation under trackage rights by one of the tenant lines in order to serve the station. If by reason of the state commission's order Southern was forced to construct a line to reach the station site the Los Angeles case would be on all-fours with the instant case. Here, however, the order apparently contemplates that Southern Railway would gain access to the station site by operating over petitioner's line. That difference is without significance on the question whether Interstate Commerce Commission approval is required.

In *Transit Commission v. U. S.*, 289 U. S. 121, 77 L. ed. 1075 (1933), the Court held that the provisions of Paragraph (18) of Section 1 applied to the abandonment of operations under trackage agreements. See also *Thompson v. Tex.-Mex. R. Co.*, 328 U. S. 134, 90 L. ed. 1132 (1946). In addition, the 1940 amendment to the Transportation Act now expressly provides in Sec. 5(2) (a):

> "It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision b)-* * * *
>
> (ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such car-

rier, and terminals incidental thereto." [Title 49, U.S.C.A. Sec. 5(2) (a)].

Section 5(4) makes it unlawful

"for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof." (Title 49 U.S.C.A., Sec. 5).

Under this statute, if the Southern and the Coast Line should attempt to enter into a trackage agreement for the use of the Coast Line's trackage by the Southern to reach the station site, without the approval of the Federal Commission, both of them would be guilty of violation of the law. *Thompson v. Tex.-Mex. R. Co., Supra.*

In addition to those direct prohibitions of the federal statute, the intent of Congress to commit to the Interstate Commerce Commission questions of terminal facilities is further revealed in Sec. 1(21) and Sec. 3(5) of the Interstate Commerce Act [Title 49 U.S.C.A., Secs. 1(21), 3(5)] which empower the Federal Commission to require the carrier to extend its line, or lines, and to require one carrier to permit another carrier to use its terminal facilities, including main line track or tracks for a reasonable distance outside of such terminal.

This Court has repeatedly said that among the primary purposes of the Transportation Act of 1920 are the avoidance of waste and the freeing of interstate commerce from undue burdens imposed by state regulatory authorities, *Colo. v. U. S.*, 271 U. S. 153 70 L. ed. 878 (1926); *Railroad Comm. v. Sou Pac. R. Co., supra.* In the Los Angeles Passenger Station Case, the Court held that the Interstate Commerce Commission could reach the expenditure for a union station required by the state in that case because it involved construction and abandonment of trackage. By the same token that Commission has jurisdiction of the proposed construction of the union station required by the state authorities in this case through

the medium of the required operation under trackage rights by one tenant line over the trackage of the other.

The state court apparently grounded its judgment upon the theory that the abandonment of the station and of Southern's operating rights had taken place without the permission of the state commission, and that the situation was, to all intents and purposes, the same as if these facilities had not been abandoned or discontinued. The court holds:

> "The respondents could not lawfully discontinue the station without the Public Service Commission's authority, under Rule 14. . . . The trackage agreement was a necessary incident to the maintenance and operation of the union station as established by the respondents, and their attempted cancellation without the authority of the Commission under Rule 14 was invalid."

It may be remarked in passing that any jurisdiction which the state commission might otherwise have in the matter of operations under trackage rights has been superseded by the jurisdiction conferred upon the federal commission in the Transportation Act of 1920. *Thompson v. Tex.-Mex. R. Co., supra.*

Moreover, the court's holding is unrealistic. The closing or discontinuance of the station is a *fait accompli,* caused not by the act of the petitioner and the Southern Railway but by the destruction of the station by fire. The trackage agreement was cancelled pursuant to its terms. The operation by Southern Railway over petitioner's trackage under the trackage agreement was abandoned five years ago. Conceivably Southern may have improperly abandoned the *operation* under the trackage agreement (*Thompson v. Tex.-Mex., supra*) and thereby incurred the penalties of the federal act but nevertheless the operation was discontinued, with no indication on the part of the Southern of any intention to resume the operation unless compelled to do so.

There is at present no station at the site of the former station. The Commission's order requires one to be built. That would cost money. That money would have to come out of the carriers' revenues as of today. Southern Railway has no right to use petitioner's facilities to reach the station site, and in order for it to serve the station it must construct a new line, or enter into a new trackage agreement with the petitioner, [to which petitioner says it will object (Rec. p. 444)], or apply to the federal commission for an order requiring the use of such terminal facilities. All of these are questions for the Interstate Commerce Commission.

Whether or not the facilities were improperly discontinued is beside the point. The substantial question is with respect to the effect and impact of the state commission's order upon the transportation situation and upon the carriers' revenues as of today.

The court plainly erred in holding in effect that the jurisdiction of the Interstate Commerce Commission to consider questions properly cognizable by that commission was ousted by reason of the fact that the facility had been discontinued five years ago without the permission of the state authorities.

QUESTION (2)

Whether Judgment Violates Due Process Clause.

Petitioner now maintains and operates a good and sufficient passenger station at Charleston North Station which serves the city of Charleston. That station was erected in 1927 and has been added to from time to time as the need therefor arose. In 1944 the waiting rooms and ticket office were enlarged at an expenditure of $16,600 (Rec. p. 385). A mail room was added in 1947 when the downtown station was destroyed by fire. The station is maintained 24 hours a day, has 4 ticket sellers, 1 baggage agent, one baggage clerk and 7 porters. In

addition, petitioner maintains a city ticket office in the Francis Marion Hotel in downtown Charleston for the convenience of petitioner's passengers (Rec. pp. 420-422).

The Charleston North Station is located to the west of Charleston at the junction of petitioner's north-south main line and the line leading to the downtown station. It is approximately 6 miles from the downtown station. It is nearer to the center of population of the greater Charleston area than is the site of the former downtown station, and since Charleston, because of its geographical location, being bounded on the east by the ocean, must necessarily expand to the west, its location will become increasingly more convenient to the traveling public of Charleston.

At the time of the destruction of the downtown station, the great bulk of petitioner's passenger travel was already using the Charleston North Station. Since then all of petitioner's Charleston passenger travel uses the Charleston North Station. Any need which may have existed in the past for the downtown station has now vanished.

The power of the State Commission to regulate is not unlimited and must be exercised within constitutional bounds. Under the guise of regulation the property of a railroad may not be taken by requiring it to furnish services or facilities not reasonably necessary to serve the public.

> *A.T. & S.F.R. Co. v. Railroad Comm.*, 283 U. S. 380, 75 L. ed. 1128 (1931);
>
> *Penna.-Reading Sea. Lines v. Board of P.U.C.* (*N. J.*) 74. A. (2d) 265, 5 N. J. 114 (1950);
>
> *A.C.L.R.R. Co. v. Pub. Serv. Comm.*, 77 F Supp. 675 (D.C.E.D.S.C. 1948).

We are not here dealing with the so-called absolute or charter duty of the carrier to furnish a transportation facility. The petitioner has furnished to the people of Charleston a good and sufficient passenger station and is being required

by the State Commission's order to add to those facilities by the construction of an additional downtown station. In that situation the matter of cost to the company is of controlling importance, and the cost of the project must be weighed against the need of the public for the additional facility.

Atlantic Coast Line R. Co. v. Pub. Service Commission, supra;

Mo.-Kansas-Texas R. Co. v. State, 119 P. (2d) 835, 189 Okla. 685 (1941);

Penna.-Reading Seashore Lines v. Board of P.U.C., supra.

In *Missouri-Kansas-Texas R. Co. v. State, supra,* the Court said:

> "So far as the issues in this case are concerned, the absolute duty of the company could be no more than to furnish reasonably adequate mail and express facilities along the line of road in question. Beyond that requirement the point of consideration resolves itself into one of convenience to the public as counter-balanced with cost to the company. If reasonably adequate service is being rendered by the facilities in use, the item of cost of additional facilities is the controlling factor. The furnishing of any facilities in excess of those that are essential to reasonably adequate service is not to be classed among the absolute, or charter, duties of the company.
>
> 'The cost of any facilities that the state may require in addition to reasonably adequate facilities for the performance of an absolute duty is of extreme importance. To require such facilities at a loss to the carrier would be arbitrary and unreasonable, and would serve to deprive the carrier of its property without due process of law."

Viewed in the light of those principles, the conclusion is inescapable that the State Commission's order is grossly unreasonable and arbitrary. On the one hand there is the cost of several hundred thousand dollars which petitioner and South-

ern Railway would have to pay to construct the station, the added cost of having to maintain and operate the station which in the last year of the operation of the former station amounted to $145,000, and the added cost to petitioner of $7,000 to $8,000 per train per annum which petitioner would incur in the operation of trains into and out of the station. Against those costs the sole public convenience and necessity to be served by the downtown station would be that passengers in the vicinity of the station would be nearer to the station.

The only two intrastate passenger trains (the Sumter-Charleston trains) operated by petitioner to and from Charleston have been discontinued by authority of the Commission for lack of patronage. Of the Charleston trains which formerly used the downtown station only trains Nos. 77 and 78 are now in operation. The state commission's order as construed by the lower court requires the restoration of "the trains now in service which used the station at the time of the fire." The state commission's order, therefore, is tantamount to the requirement that the downtown union station be rebuilt in order that trains Nos. 77 and 78, which now use the north station, can be operated to and from the downtown station.

Plainly to require petitioner to incur the heavy costs of complying with the commission's order where the petitioner already maintains an adequate station and service in suburban Charleston, and there is no substantial need for the downtown station would be unjust, unreasonable, arbitrary, and in contravention of the due process clause of the Federal Constitution.

Question (3)

The Burden Upon and the Attempted Regulation of Interstate Commerce

The heavy expense incident to the construction and operation of the station pursuant to the commission's order, cou-

pled with the absence of any real need therefor, of itself casts an undue burden upon petitioner's interstate revenues and is a burden upon interstate commerce.

Colorado v. U. S., 271 U. S. 153, 70 L. ed. 878 (1926);

P. R. Co. v. Driscoll, 198 A. 130, 330 Pa. 97 (1938).

The part of the commission's order which requires the inauguration of passenger train service constitutes a direct interference with interstate commerce. The only trains which now serve Charleston are through interstate trains, the intrastate trains having been discontinued by authority of the state commission because of the lack of patronage. These trains already serve Charleston at the North Station. The commission's order requires the operation into and out of the downtown station of interstate trains Nos. 77 and 78 which now use the North Station. That would add 13 miles to their trips and would slow the schedules of those interstate trains by approximately 30 minutes. This would be direct regulation of interstate commerce. *So. Pac. Co. v. Arizona*, 325 U. S. 761, 89 L. ed. 1915 (1945); *St. L. & S.F. R. Co. v. Comm.*, 254 U. S. 535, 65 L. ed. 389 (1921); *Missouri, K. & T. R. Co. v. Texas*, 245 U. S. 484, 62 L. ed. 419 (1918).

In *Atlantic Coast Line R. Co. v. Wharton*, 207 U. S. 328, 52 L. ed. 230 (1907), in which this Court struck down an order of the state commission of South Carolina requiring a railroad company to stop on signal two of its three through interstate trains at a small town in South Carolina, the Court said:

> "That any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution, is obvious. It hence arises that any command of a state, whether made directly or through the instrumentality of a railroad commission, which orders,

> or the necessary effect of which is to order, the stopping of an interstate train at a named station or stations, if it directly regulates interstate commerce, is void."

In *Mo. K. & T. R. Co. v. Texas, supra,* in which the Court struck down an order of the state commission which undertook to fix the time allowed for stops in the course of interstate transit, the Court said:

> "The question is not what the State Commission might require of a road deriving its power from the state, with regard to local business (Missouri P.R. Co. v. Kansas, 216 U. S. 262, 283, 54 L. ed. 472, 481, 30 Sup. Ct. Rep. 330), but whether the order, if applied to this case, would not unlawfully interfere with commerce among the states.
>
> "On its face the order as applied was an interference with such commerce."

The judgment complained of is not in accord with those decisions, and for that reason should be reviewed.

Question (4)

Whether the Service Portion of the Order is Valid where the Question of Passenger Train Service was not in Issue and no Evidence was Produced thereon.

The second requirement of the commission's order which deals with the establishment of passenger train service to and from the station is not only wholly unsupported by evidence, but, according to the statement of plaintiff's own counsel in proceedings before the commission, the matter of passenger train service was not in issue in the proceedings before the commission. At the hearing before the commission the following colloquy took place between Mr. Belser, counsel for the plaintiff, and Mr. Howell, counsel for the petitioner:

> "Mr. Belser: This seems to me, Mr. Baskin, the question of the establishment of a Union Station in

> Charleston, we are not concerned now with the passenger train service, are we. It doesn't seem to me that it is involved in this case.
>
> Mr. Howell: Mr. Belser, doesn't the number of trains that may reasonably be expected to use the station have something to do with the necessity for the station?
>
> Mr. Belser: Why certainly, but that's another problem, dealing with the service that's coming into the City of Charleston."

No evidence was introduced before the Commission to indicate what train service, if any, should now be operated to and from the rebuilt station. The only two intrastate trains which served Charleston at the time of the fire have been discontinued for lack of patronage by authority of the state commission, after hearing. There is no evidence to show what public need, if any, there is for train service to and from the old station site, or how much the service would cost. In short, the Commission, in so far as the matter of the inauguration of service is made a part of its order, has simply ruled blindly that the carriers must operate into and out of the union station at Charleston the same passenger trains now in service which operated into and out of that station five years ago.

The Supreme Court of South Carolina has held that before the South Carolina Commission can require a carrier to furnish a transportation facility there must be a "full hearing and investigation of the facts". *Darby v. Southern Ry Co.*, 10 S.E. (2d) 465, 194 S.C. 421 (1940).

In *Alabama Pub. Serv. Comm. v. So. Bell T. & T. Co.*, 42 S. (2d) 655, 253 Ala. 1 (1949), the Court said:

> "It must be true that when an administrative body is authorized to act only after hearing, its action must be based upon findings supported by the evidence adduced at the hearing. When an order is based upon findings without evidence to support them, as herein-

> above defined, the order is arbitrary as a matter of law and a denial of due process."

In the case of *Morgan v. United States*, 298 U. S. 468, 480-482, 56 S. Ct. 906, 911, 80 L. ed. 1288, 1294-1295, this Court said that "there must be evidence adequate to support pertinent and necessary findings of fact", and that "findings based on the evidence must embrace the basic facts which are needed to sustain the order." The Court held that the regulatory body must consider the evidence, be guided by it alone, and reach conclusions uninfluenced by any extraneous considerations.

In *B.&O. R. Co. v. U. S.*, 264 U. S. 258, 68 L. ed. 667 (1924), it is stated.

> "To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

Plainly, the order of the Commission requiring the inauguration of passenger train service to and from the rebuilt station without any hearing or evidence as to the present public need for such service, is "arbitrary as a matter of law and a denial of due process". *Ala. Pub. Serv. Comm. v. So. Bell T. & T. Co., supra.*

CONCLUSION

In conclusion, petitioner respectfully submits that for the reasons stated herein, a writ of certiorari to the Supreme Court of South Carolina should be granted and that this Court should review and reverse the judgment of the said Supreme Court of South Carolina upholding the writ of mandamus issued by the lower court requiring obedience to the order of the state commission directing petitioner and Southern Railway to "rebuild their passenger station building in the city of Charleston, S. C. on the site of the station building

which burned January 10, 1947, and thereafter to inaugurate passenger train service thereto and therefrom."

Respectfully submitted,

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December 12, 1952

APPENDIX

United States Code
Title 49

§1. Regulation in general; car service; alteration of line—*Extension or abandonment of lines; certificate required; contracts for joint use of spurs, switches, etc.*

(18) No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment. Nothing in this paragraph or in section 5 shall be considered to prohibit the making of contracts between carriers by railroad subject to this chapter, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. As amended June 19, 1934, c. 652, § 602 (b), 48 Stat. 1102; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, §§ 2, 3 (a,b), 4, 54 Stat. 899, 900, 901; June 24, 1948, c. 622, 62 Stat. 602; Aug. 2, 1949, c. 379, § 1, 63 Stat. 485.

(19) *Application for certificate of commission; notice and hearing.* The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the commission may from time to time prescribe, and the provisions of this chapter shall apply to all such proceedings. Upon receipt of any application for such certificate the commission shall cause notice thereof to be given to and a copy filed with the governor of each State

in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20) *Issuance of certificate by commission; unlawful extension or abandonment of lines.* The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof described in the application, or for the partial exercise only of such right of privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizies, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

(21) *Power of commission to require adequate facilities or extension of line; penalty.* The commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any

carrier by railroad subject to this chapter, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this chapter, and to extend its line or lines: *Provided*, That no such authorization or order shall be made unless the commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this chapter which refuses or neglects to comply with any order of the commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

§3. Preferences; interchange of traffic; terminal facilities—*Terminal facilities; use of and compensation for.*

(5) [Formerly (4)] If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have

thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

§5. Combinations and consolidations of carriers—

Unifications, mergers, and acquisitions of control

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305 (e), and shall afford reasonable opportunity for interested

parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this parabraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Control effected by other than prescribed methods

(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stock-

holders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph 5), the words "control or management" shall be construed to include the power to exercise control or management.

5

FILED
JAN 15 1953

Supreme Court of the United States

OCTOBER TERM, 1952

No. 502

ATLANTIC COAST LINE RAILROAD COMPANY,
PETITIONER AND APPELLANT BELOW,
versus
THE STATE OF SOUTH CAROLINA, EX RELATIONE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, AND CHARLES A. RICE, J. C. DARBY, JOHN G. CONEY, WINCHESTER SMITH, F. B. HINES, EDWARD WIMBERLY, AND RUFUS M. NEWTON, AS MEMBERS OF AND CONSTITUTING THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, AND JOHN M. DANIEL, AS ATTORNEY GENERAL OF SOUTH CAROLINA, AND THE CITY OF CHARLESTON, RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF OF RESPONDENTS IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF OF RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of South Carolina is reported at *The State of South Carolina ex relatione Public Service Commission et al. v. Atlantic Coast Line Railroad Co. et al.*, 72 S. E. (2d) 438.

JURISDICTION

The judgment of the Supreme Court of South Carolina was entered on September 5, 1952, and rehearing denied on September 25, 1952. The petition for a writ of certiorari was filed on December 12, 1952, and a copy thereof was served on counsel for the respondents on December 17, 1952. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1257 (3).

QUESTIONS PRESENTED

1. Whether the approval of the Interstate Commerce Commission was a prerequisite to the validity of the action of the Public Service Commission of South Carolina requiring the restoration by the petitioner and the Southern Railway Company of passenger station facilities at the point and on the premises at which the burned station was located.

2. Whether the order of the Public Service Commission of South Carolina was arbitrary and unreasonable, amounting to a denial of due process, or cast an undue burden on interstate commerce.

3. Whether the portion of the order of the Public Service Commission of South Carolina providing that the petitioner and the Southern Railway Company inaugurate passenger train service to and from the restored passenger station facilities when restoration was completed was invalid.

STATUTES AND REGULATIONS INVOLVED

The applicable State statutes and regulations are printed in the Appendix to this Brief, *infra*, pp. i——. The applicable Federal statutes are printed in the Appendix to the petitioner's Brief.

STATEMENT

On January 10, 1947, the Charleston Union Station, located at Columbus and Bay Streets in the city of Charleston, South Carolina, was partially destroyed by fire, the destruction including the portion of the station building devoted to the accommodation of passengers, the sale of tickets, and the handling of baggage.

This station constituted the only passenger station facilities afforded by the petitioner, Atlantic Coast Line Railroad Company, and by the Southern Railway Company, in the city of Charleston at the time of the fire, and it had been so used by them for approximately 40 years prior thereto.

On June 14, 1950, the Public Service Commission of South Carolina, in a proceeding (hereinafter referred to) instituted before it by the city of Charleston, made an order directing the petitioner and the Southern Railway Company to rebuild their passenger station building on the site of the station building which burned on January 10, 1947, and thereafter to inaugurate passenger train service thereto and therefrom.

On November 20, 1950, the Public Service Commission and others instituted a proceeding in the Court of Common Pleas for Charleston County, South Carolina, under Section 8341 of the Code of Laws of South Carolina (1942), for the issuance of a writ of mandamus requiring the petitioner and the Southern Railway Company to comply with the Commission's order. From the judgment entered by that Court on February 10, 1951, granting the writ, the petitioner and the Southern Railway Company appealed to the Supreme Court of South Carolina, which Court, on September 5, 1952, affirmed the judgment.

The Charleston Union Station was constructed in 1907, and since then maintained and operated, by the Charleston

Union Station Company, the jointly owned agency and instrumentality of the petitioner and the Southern Railway Company. The Charleston Union Station Company was a corporation created by Act No. 625 of the Acts of the General Assembly of South Carolina of 1902 (23 S. C. Stats. at Large 1168)

> "for the purpose of constructing, maintaining and operating a Union Passenger Station in the City of Charleston, South Carolina, and to that end to acquire by purchase, lease, condemnation as hereinafter provided, or otherwise, any and all property that may be necessary for the construction, maintenance and operation thereof in said city, and by such name **to have all the general powers, and be subject to all the general restrictions, given and imposed by the laws of this State upon railroad corporations.**" (Emphasis added.)

Under date of January 1, 1907, the petitioner and the Southern Railway Company, as an essential and integral part of their joint station project, entered into a trackage agreement whereby the petitioner granted to the Southern Railway Company

> "the right to use conjointly with the Coast Line Company the line of double track railway of the Coast Line Company between the connection (which it is hereby agreed may be made by the Southern Company) of the said line of the Coast Line Company with the line of the Southern Company * * * to a connection with the track to be constructed by the Charleston Union Station Company * * * all in the City of Charleston, State of South Carolina, being a distance of seven thousand six hundred (7,600) feet * * * **for the purpose of running thereon the passenger trains and passenger engines of the Southern Company** * * *." (R. 503.) (Emphasis added.)

The agreement recited that the petitioner and the Southern Railway Company "have caused to be organized **in their joint interest** a corporation in the State of South

Carolina of the name of Charleston Union Station Company, for the purpose of constructing and operating a passenger terminal and Union Station in the City of Charleston, South Carolina, **which will be used in common** by the parties hereto * * *." (R. 501, **et seq.**) (Emphasis added.)

Under date of January 1, 1911, the petitioner and the Southern Railway Company agreed in writing that the "Southern Company" should have the right to use the "Coast Line Company's" "Y" track near the Union Station building, by which passenger trains were backed into the station (R. 522), and under date of March 8, 1916, an agreement supplementary to the trackage agreement of January 1, 1907, extended the "Southern Company's" right to use the double tracks of the "Coast Line Company" to a point approximately 3,887 feet North of the original connection between the lines of the two companies (R. 513, 515).

In 1914 the Seaboard Air Line Railway Company came into Charleston, and used the facilities of the station until 1930, when it was authorized by the Public Service Commission (then called the Railroad Commission of South Carolina) to provide and use its own passenger station on Grove Stret (R. 17, 482).

On June 30, 1937, the Public Service Commission, pursuant to Section 8292-12 of the Code of Laws of South Carolina (1942) under which it has the general supervision of all railroads and railways in the State and the duty of enforcing compliance by them with their charters and the laws of the State, promulgated and filed with the Secretary of State of South Carolina its Rule 14, which provided:

> "Each and every depot, flag stop, station, office and agency, now maintained, conducted or used in South Carolina by any railroad * * * doing business in this State, for the transaction of business with

> the public **is hereby formally established and located at the point and on the premises** where the same is now being maintained and conducted. No such depot, flag stop, station or agency, as aforesaid, now established, or that hereafter may be established, pursuant to orders made by the Commission, or voluntarily by such company, or otherwise, shall be closed, removed, suspended, discontinued, or abolished without authority granted by the Public Service Commission. * * *'' (Emphasis added.)

Under Rule 14, notice is required to be given to the public for 30 days before an application for authority to close, remove, suspend, discontinue or abolish a depot or station may be made to the Public Service Commission.

The Charleston Union Station Company received $158,366.00 from fire insurance sources in settlement of losses sustained in the fire, which, however, has not been used to replace any portion of the damaged station building. Instead, the petitioner and the Southern entered into negotiations with the authorities of the city of Charleston looking to the re-establishment of suitable passenger station facilities for the city and its residents and the travelling public generally.

At the time of the fire the Southern was operating trains 11 and 12 and trains 27 and 28 into and out of Charleston, trains 11 and 12 running between Charleston and Columbia and trains 27 and 28 running between Charleston and the middle west. These trains either originated or terminated at the station as the terminus.

At that time the petitioner Atlantic Coast Line was operating trains 52 and 53, trains 77 and 78, and trains 80 and 89 into and out of Charleston, trains 52 and 53 running between Charleston and Sumter, trains 77 and 78 (The Palmetto Limited) running between Savannah, Ga., and Richmond, Va., and trains 80 and 89 running between Charleston and Richmond, Va.

Some years prior to the fire the appellant Atlantic Coast Line Railroad Company had established a passenger station near North Charleston, an unincorporated community, approximately six miles North of the limits of the City of Charleston, which it called the North Station. This station was located on the double tracks of the Atlantic Coast Line running from Richmond, Va., to Florida, and near the point where such tracks crossed the Ashley River. The Atlantic Coast Line stopped certain of its through trains which did not run into the City of Charleston, but all of the Atlantic Coast Line trains which therefore ran into the city continued to operate to and use the Charleston Union Station. They ran to and from the city on the double tracks mentioned in the trackage agreements referred to above.

Immediately after the fire, the petitioner Atlantic Coast Line began to use its North Station for the trains formerly operating to and from the Union Station, and the Southern Railway Company provided old railroad passenger coaches at a point on Line Street in the city of Charleston to serve as a passenger station, operating thereto and therefrom the passenger trains formerly using the Charleston Union Station.

No formal authority was sought or obtained by either of them from the Public Service Commission of South Carolina or from the Interstate Commerce Commission for such changes in operation. Representatives of the petitioner and of the Southern merely conferred informally with members of the Public Service Commission, apprising them of the dispositions being made as a result of the fire, and the Commission stated that the proposed arrangement was entirely satisfactory, "and to continue in effect until some definite agreement was reached in connection with permanent facilities" (R. 457).

In the negotiations with the city, the petitioner Atlantic Coast Line proposed to develop its North Station further and use it as a passenger station for the city of Charleston, while the Southern proposed to provide a station for its passenger purposes on Ann Street in the city. These proposals were rejected by the city authorities. In August, 1949, the City of Charleston filed its petition with the Public Service Commission, complaining of:

(a) The action of the petitioner Atlantic Coast Line in transferring all of its passenger depot facilities to the Charleston North Station, some miles removed from the city, thus necessitating passage by taxi or private motor vehicle to and from the city, unless passengers resort to the use of a shuttle-bus, employed by the company, between the North Station and the City Market, at the cost of additional travel time and the general inconvenience of the public;

(b) The action of the Southern in locating its present passenger depot on Line Street, with only a renovated railroad coach as ticket office; and

(c) The continued delay and inaction of the two companies in providing within the city a suitable Union Station or separate suitable passenger depots, although there is available for that purpose the site of the former Charleston Union Station, which formerly was used jointly by the companies, where tracks, well removed from the center of the city, are in place and where the convenience, safety and necessity of the public would be properly met (R. 5).

The petitioner and the Southern filed separate motions to dismiss, which challenged the Commission's jurisdiction of the subject-matter of the petition, and also answered the City's petition.

The Southern's answer denied that it has refused since the fire "to provide its own station or join, under appropriate conditions, in negotiations for a Union Station" (R. 7).

It also alleged that there "is no necessity for a Union Station at Charleston insofar as the passenger travel of Southern Railway Company is concerned," but that despite such lack of necessity it had signified its willingness to join in consideration thereof if certain conditions were met (R. 11), these conditions having to do with access by the Southern to the vicinity of the Coast Line's Columbus Street yard and the availability of property there suitable and sufficient to enable the Southern to locate satisfactory yard, shop and other facilities thereon (R. 561).

The petitioner's answer denied that the public had been inconvenienced or has spent additional travel time in reaching its facilities at "Charleston North Station" (R. 13); alleged that "so far as interchange of passengers between the railroad lines at Charleston, South Carolina, is concerned, no necessity exists for the construction of a union passenger terminal"; and also alleged that, in view of the decline of passenger travel to and from Charleston since World War II because of other forms of transportation, it "has been and will continue to be able to adequately serve all passengers with the present facilities at the Charleston North Station, and * * * believes and therefore avers that no justification now exists for the construction of additional passenger station facilities at Charleston, with the expense incident thereto" (R. 14).

The Commission held hearings on the matter, and the parties introduced evidence. During the hearings it developed that the petitioner and the Southern Railway Company (without authority from any regulatory commission) had executed an agreement between themselves which purpored to terminate the trackage agreement of January 1, 1907, and the agreements supplementary thereto, the instrument so executed reciting that "the Charleston Union Station Company has elected not to rebuild the said passenger

station, and the joint use by the Southern Company of certain trackage of the Coast Line Company in connection with the joint use of said passenger station **is no longer necessary or required** by the Southern Company * * *" (Exhibit 55, R. 529.) (Emphasis added.)

On June 14, 1950, the Commission filed its order, in which it found: (1) that there is need in the City of Charleston for adequate and suitable passenger terminal facilities for the handling of passenger train traffic moving to, from or through the city via the two railroad companies; (2) that rebuilding of the Charleston Union Station and the resumption of passenger station operation to and from that station via the two railroad companies will reasonable satisfy the need found to exist; and (3) that an order directing and requiring the two railroad companies to forthwith rebuild their passenger station in Charleston on the site of the station building which burned January 10, 1947, and thereafter inaugurate passenger train service thereto and therefrom, should be entered.

The Commission's Order No. 7271, compliance with which is sought by the respondents in this proceeding, was entered in accordance with such findings (R. 29-30).

The petitioner and the Southern did not comply with the order, nor did they file the monthly reports required by it. Instead, they each commenced an action in the United States District Court for the Eastern District of South Carolina, seeking injunctions, both interlocutory and permanent, to prevent the enforcement of the order as being null, void, and of no effect. A special court of three judges was ordered to be convened to hear the actions on November 21, 1950.

On November 20, 1950, the respondents filed in the Court of Common Pleas for Charleston County a petition under Section 8341 of the Code of Laws of South Carolina

(1942) praying that a writ of mandamus be issued under that section requiring the appellants to comply with the Commissioner's order. Circuit Judge Martin, presiding judge of the Ninth Judicial Circuit, ordered the appellants to show cause before him on December 11, 1950, why the prayer of the petition should not be granted, and in his order stayed and enjoined the enforcement of the Commission's order pending the determination of the proceeding and for a like period after the expiration of the twelve months period prescribed in the Commission's order for compliance therewith (R. 87).

The District Court of three Judges thereupon by appropriate orders stayed the actions brought by the petitioner and the Southern in the U. S. District Court, in conformity with 28 U. S. C., section 2284.

The petitioner Atlantic Coast Line Railroad Company moved before Judge Martin for an order vacating or modifying the order to show cause, on grounds which, *inter alia*, challenged the right of the respondents to have the enforcement of the Commission's order stayed and enjoined since no irreparable injury to them is alleged (R. 89).

The Circuit Court, by order dated November 22, 1950, overruled the motion.

The appellants thereafter filed separate returns to the petition and rule to show cause, and the respondents traversed various allegations therein.

The petitioner and the Southern Railway Company, in their returns, challenged the jurisdiction of the Commission to require the rebuilding of the station without first obtaining the approval of the Interstate Commerce Commission, and also contended that the order was invalid as being arbitrary and unreasonable, amounting to a denial of due process of law and equal protection of the laws, and as casting an undue burden on interstate commerce.

The matter was heard by Circuit Judge Martin on December 11, 1950, pursuant to the rule to show cause, and the parties introduced in evidence the record of the proceedings before the Public Service Commission, and also additional evidence by way of affidavits. Such additional evidence included evidence by both parties in reference to the cost of construction involved in restoring the burned station, as to which neither of the parties had offered any evidence in the hearings before the Public Service Commission.

On February 10, 1951, Judge Martin filed his order granting the relief sought by the respondents under Section 8341, and his order was affirmed and adopted by the Supreme Court of South Carolina as its judgment on the issues presented by the petition for a writ of certiorari.

SUMMARY OF THE ARGUMENT

Point 1. The Public Service Commission of South Carolina was empowered to make its order requiring the restoration of passenger station facilities at the point and on the premises at which the burned station was located. The approval of the Interstate Commerce Commission was not a prerequisite to the validity of its action, no new trackage agreement or extension of lines being necessary to compliance by the railroad companies with the order.

Point 2. The finding of the Public Service Commission of South Carolina, and of the State Court, that the restoration of passenger station facilities at the point and on the premises at which the burned station was located is necessary to afford suitable passenger station service in the city of Charleston is fully supported by the evidence. The Commission's order was not arbitrary or unreasonable, and the mere fact that the operation of the station may not be profitable by itself does not constitute a confiscation of the

property of the petitioner, or unduly burden interstate commerce.

Point 3. The provision in the order of the Public Service Commission of South Carolina that passenger train service be inaugurated to and from the restored station merely stated a legal incident of the re-activation of the station after its restoration for use as such.

ARGUMENT

Point 1. The Public Service Commission of South Carolina was empowered to make its order requiring the restoration of passenger station facilities at the point and on the premises at which the burned station was located. The approval of the Interstate Commerce Commission was not a prerequisite to the validity of its action, no new trackage agreement or extension of lines being necessary to compliance by the railroad companies with the order.

The petitioner suggests that a conflict of jurisdiction between the Public Service Commission of South Carolina and the Interstate Commerce Commission is present in the instant case.

It contends (a) that under the "so-called Los Angeles Passenger Station case" a certificate of approval by the Interstate Commerce Commission is a condition precedent to the validity of the State Commission's order that the two railroad companies restore passenger station facilities at the location of the burned station; (b) that the voluntary termination by the two railroad companies of the trackage agreements between them existing at the time of the fire was effectual, despite the State Commission's Rule 14, because the Interstate Commerce Commission's power to approve new trackage agreements, and because operations under trackage agreements may not be validly abandoned without the approval of that commission; and (c)

that accordingly either an extension of lines by the Southern Railway Company, or a new trackage agreement between that company and the petitioner for the use of the tracks of the latter, is necessary for the Southern's trains to operate to and from the station, requiring prior approval by the Interstate Commerce Commission.

It is respectfully submitted that the Los Angeles cases do not have the effect contended for by the petitioner. Instead, they support the action of the State Commission and the judgment of the State court in the instant case.

In the first of the Los Angeles cases, *Railroad Commission v. Southern Pacific Co. et al.*, 264 U. S. 331, the State Commission ordered the three railroad companies involved to build a new interstate union depot in the City of Los Angeles. Compliance with the order required the joint use of land, tracks and terminal facilities, and the abandonment of three existing passenger stations as such, together with substantial extension, relocation and abandonment of existing trackage, all at vast cost to the railroad companies. This Court affirmed the decision of the State Supreme Court that the order was beyond the power of the State Commission under Sections 1 (18) and 1 (21) of the Interstate Commerce Act, 49 U. S. C., sections 1 (18) and 1 (21). In its opinion **this Court drew a distinction between depots such as that there under consideration and "local union stations," saying that the differences "are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind.** They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission." (p. 346 of 264 U. S.) (Emphasis added.)

In the second case, *Interstate Commerce Commission v. United States ex rel. Los Angeles*, 280 U. S. 52, this Court

held that the Interstate Commerce Commission was not given the power, by the Congressional legislation under consideration, to order the construction of the Los Angeles union depot.

In the third case, *Atchison, T. & S. F. Ry. Co. v. Railroad Commission,* 283 U. S. 380, this Court upheld the validity of the order of the State Commission requiring the carriers to build the Los Angeles union depot. With reference to *Railroad Commission v. Southern Pacific Co. et al., supra,* 264 U. S. 331, this Court said:

> "The Court held that the relocation of tracks, which was incidental to the proposed union station, required a certificate of approval of the Interstate Commerce Commission under paragraphs 18 to 21 of section 1 of the Interstate Commerce Act, as amended by the Transportation Act of 1920 (41 Stat. 476-478), as a condition precedent to the validity of any action by the carriers or of any order by the State Railroad Commission." (p. 387 of 283 U. S.)

This Court, in upholding the State Commission's order, recognized the principle that the State, directly or through an authorized commission, may require railroad companies to provide reasonably adequate and suitable facilities for the convenience of the communities served by them, and that railroads may be compelled by State legislation to establish stations at proper places for the convenience of their patrons, including union stations. (pp. 394, 395 of 283 U. S.)

The station involved in the instant case differed in kind from that considered in the Los Angeles cases. The original establishment and construction of a new Union Station is not here involved. Compliance with the Public Service Commission's order does not necessitate the extension, relocation or abandonment of any trackage, for the trackage by which the Charleston Union Station was

reached and used by the petitioner and the Southern Railway Company for approximately 40 years is intact and in place for the resumption of the passenger train service thereto and therefrom which was interrupted by the fire damage to the station.

The order merely required the restoration of passenger station facilities and services at the point and on the premises formally established by the Public Service Commission's Rule 14 as the proper location for the convenience of the public in the city of Charleston, authority to discontinue or abandon which location the petitioner and the Southern had neither obtained nor sought from the State Commission in the manner prescribed by the Rule.

When the petitioner says that the fire, rather than the railroad companies, abandoned the station, it overlooks the fact that Rule 14 deals with the proper location of their passenger station (as originally selected by them and formally established by the Rule on June 30, 1937), and not with the physical structure. In effect, the Rule made the point and the premises on which the burned station was located *prima facie* the proper location of the station, with the burden upon the railroad companies of making application to the Public Service Commission, after public notice, for authority to close, remove, suspend, discontinue or abandon the same. The requirements of the Rule are reasonable and valid. *Minneapolis & St. Louis Railroad Co. v. Minnesota,* 193 U. S. 53, 63; *Western & Atlantic Railroad v. Georgia Public Service Commission,* 267 U. S. 493, 496; *Atchison, T. & S. F. Ry. Co. v. Railroad Commission, supra,* 283 U. S. 380, 394, 395.

In *Minneapolis & St. Louis Railroad Co. v. Minnesota, supra,* at page 63 of 193 U. S., this Court held:

> "To establish stations at proper places is the first duty of a railroad company. The State can certainly provide for the enforcement of that duty. An incor-

porated village might be said to be such a place without an express declaration of the statute. To make it *prima facie* so by statute and to impose the burden of meeting the presumption thence arising certainly does not amount to an invasion of the rights of property or an unreasonable control of property."

The Public Service Commission and the State Court held that the trackage agreement between the petitioner and the Southern Railroad Company at the time of the fire was a necessary incident to the maintenance and operation of the station as jointly established by the two railroad companies for their use "in common" (R. 502), and was an integral part of the arrangement under which it was established and used by them. This Court has recognized that "trackage agreements like leases of railroad tracks and facilities are means by which railroad systems have been assembled." *Thompson v. Texas Mexican Ry. Co.*, 328 U. S. 134, 142, 143.

The State Court held that the trackage agreement, as an integral part of the station apparatus, as established, operated and used by the two railroad companies, could not be voluntarily terminated by them without authority of the Public Service Commission under Rule 14, and that the attempted termination without such authority was invalid and of no effect. Hence the trackage agreement remains of force; the parties will operate under it, after the station is restored, just as they did for approximately 40 years prior to the fire; and no new trackage agreement, nor any extension of lines, calling for the exercise of its jurisdiction by the Interstate Commerce Commission, will be necessary.

The petitioner in its Brief (p. 11) says that "The trackage agreement was cancelled pursuant to its terms." But the trackage agreement by its terms remains effective during the life of any contract between the Charleston

Union Station Company and the two railroad companies for their joint use of the station (R. 507, 510). Apparently because of this fact, they recited in the termination agreement that the Charleston Union Station Company (their jointly owned agency and instrumentality, itself subject by the Act which created it to "all the general restrictions, given and imposed by the laws of this State upon railroad corporations," which, of course, included the provisions of Rule 14 of the Commission) *had elected* not to rebuild the station after the fire (R. 529). It would seem that the trackage agreement was cancelled because their jointly owned Charleston Union Station Company "had elected", without authority from the Public Service Commission, not to rebuild, and hence to abandon and discontinue, the station; in other words, the cancellation was predicated upon the unauthorized and unlawful action of the jointly owned agency of the two companies.

It is respectfully submitted that the only reasonable inference from the record before the Public Service Commission and the State Court is that the termination of the trackage agreement was a step in concerted action on the part of the two railroad companies to discontinue and site at Columbus and Bay Streets as the location of their passenger station service in the City of Charleston, the provisions of Rule 14 and of 49 U. S. C., section 1 (18) (as to the abandonment of operations) to the contrary notwithstanding.

The petitioner has not pointed to any provision in the Federal legislation which gives the two railroad companies the right voluntarily to terminate the trackage agreement despite the provisions of Rule 14.

It advances the argument that the State's right to regulate the termination of the trackage agreement (as an essential element of the establishment, use and continued

operation of the station) no longer exists because of Federal legislation providing for the authorization of new trackage agreements by the Interstate Commerce Commission, 49 U. S. C., section 5(2)(a)(ii), and that carriers may not validly abandon operations (including operations under trackage agreements) without a certificate from the Interstate Commerce Commission, 49 U. S. C., section 1(18).

But nothing in this legislation evidences an intent on the part of the Congress to relieve carriers from existing State regulations as to the termination of trackage agreements essential to the continuing operation of a passenger station, certainly where authority from the Interstate Commerce Commission to abandon operations under the trackage agreement has not been sought and obtained.

The action of the Public Service Commission in the instant case did not invade the field of jurisdiction given by law to the Interstate Commerce Commission; such action was a proper exercise of the right of the State to require the railroad companies to furnish reasonably adequate and suitable passenger station service at a proper and formally established place; and it is respectfully submitted that the State Court did not err in holding that the Public Service Commission's order was within the limits of its authority and valid.

Point 2. The finding of the Public Service Commission of South Carolina, and of the State Court, that the restoration of passenger station facilities at the point and on the premises at which the burned station was located is necessary to afford suitable passenger station service in the city of Charleston is fully supported by the evidence. The Commission's order was not arbitrary or unreasonable, and the mere fact that the operation of the station may not be profitable by itself does not constitue a confiscation of the property of the petitioner, or unduly burden interstate commerce.

The petitioner also challenges the validity of the order of the Public Service Commission as being arbitrary and unreasonable, amounting to a denial of due process of law, and also as casting an undue burden on interstate commerce.

It first says that compliance with the order will cost money in building passenger station facilities at Columbus and Bay Streets, and that "That money would have to come out of the carriers' revenues as of today." (Petitioner's Brief, p. 12.)

No evidence as to the cost of restoring the station was offered in the hearings before the Public Service Commission, but both sides offered evidence on this issue in the hearing in the Court of Common Pleas before Circuit Judge Martin.

The estimates of the two railroad companies ran from $400,000.00 to $800,000.00 to rebuild the station as it stood before the fire. The evidence offered by the respondents showed that the rebuilding of the station as it was before the fire would cost approximately $280,000.00; its rebuilding without waste space approximately $200,000.00; its rebuilding without the second floor railroad company offices approximately $125,000.00; and that a building such as that provided by the petitioner at its North Station would cost approximately $50,000.00 to build.

The State Court held:

> "The Commission's order may not reasonably be construed to contemplate exact duplication in detail of the 1907 station structure. The Commission was dealing with passenger facilities, and **the evidence shows that a suitable station for that purpose of modern design and construction can be provided on the site of the burned station for not in excess of the amount of insurance received on account of the fire damage.** The order does not require the perpetuation

of waste space, antiquated architecture, and features not essential to proper passenger service." (R. 140.) (Emphasis added.)

The railroad companies are protected by the insurance money from having to go into their revenues to comply with the order.

The petitioner also says that it is unreasonable to require the restoration of passenger station facilities in the City of Charleston, because it has its North Station (some six miles distant from the city limits and in an unincorporated area) which can be used by persons travelling to and from the city. The Commission found on the evidence that the North Station of the petitioner, with a shuttle-bus operated by the petitioner from that point to the City Market (having no passenger station facilities), does not constitute a satisfactory performance of the petitioner's duty to render passenger station service in the City of Charleston, and that the interim lack of passenger station facilities in the city had adversely affected passenger traffic since the fire, as shown below.

Moreover, the location of the Charleston Union Station continues to be the proper location formally established under the Commission's Rule 14, and no authority has been obtained or sought by the petitioner or by the Southern Railway Company either to discontinue the station at that location, or to abandon the operation to that point of the trains now in service which operated thereto and therefrom prior to the fire.

Under the evidence and all the circumstances, the Commission's order cannot be said to be unreasonable because the petitioner has its North Station in operation approximately six miles out of the city.

The two railroad companies also offered evidence that the Charleston Union Station operated at a loss, but their

witnesses also admitted that union stations "are all operated at a loss," and that in this respect the Charleston Union Station "wasn't any different from any other Union Station over the Southern or the Coast Line." (R. 249.)

The evidence also showed that there is little interchange of passengers between the lines of the two railroad companies at Charleston, but, as pointed out in the opinion of the State Court, there was no evidence that there was ever any substantial interchange of passengers between their lines, or that they originally established the station for their joint use with a view to passenger interchange. In reality the station was a joint station rather than a union station.

The Southern offered evidence that it could reduce its operating costs by making up its trains on its own tracks instead of having to bring its engines to the Union Station to pick up its trains; but the evidence also showed that the Southern "had no objection to the Union Station before it burned," and "no considered plans for pulling out of it ever." (R. 347.)

The petitioner contended that use by it of the North Station alone would save time and expense involved in train operation into and out of the City of Charleston; but the Commission's order did not contemplate that the petitioner would do more than resume the train operations into and out of Charleston that were interrupted by the fire damage to the station, and therefore did not cause an increase in the time and expense elements referred to.

The two railroad companies offered evidence that there has been a sharp reduction in passenger traffic into and out of Charleston since the fire, in consequence of which the Southern was authorized by the Public Service Commission in July, 1950 (after the issuance of its order here

under consideration), to discontinue its intrastate trains 11 and 12, and the petitioner was likewise authorized in the same month to discontinue its intrastate trains 52 and 53. Earlier, and after the fire, the petitioner obtained authority from the Interstate Commerce Commission to operate its interstate trains 80 and 89 from Richmond, Va., to and from Florence, S. C., as their southern terminus, although their southern terminus prior to the fire was Charleston.

The Public Service Commission recognized, of course, that the discontinuance of the intrastate trains referred to had the effect of transferring intrastate passenger travel to the interstate trains of the two railroad companies, as is evidenced by the provision in the Commission's order authorizing the discontinuance of Southern trains 11 and 12 which required, as a condition thereof, the rearrangement of the schedules of its interstate trains 27 and 28 to serve the cities, towns and communities in South Carolina previously served by trains 11 and 12 (R. 576). Intrastate passenger train service by the two railroad companies, and the need therefor, did not disappear; it was merely shifted to their interstate trains.

The evidence showed that whereas the Southern sold 24,746 passenger tickets in its city ticket office and depot ticket office at Charleston in 1946, there was a sharp decrease after the fire, as follows: 1947, 13,669; 1948, 9,954; 11 months of 1949, 7,957. Total revenues of all participating carriers derived from such ticket sales in 1946 was $454,918.70. In 1947, it was $187,789.62; in 1948, $129,197.20; and in 11 months of 1949, $82,146.30. (R. 463, 464.) The petitioner offered no similar figures, and it is fair to infer that they would have shown no different result.

These figures, and the necessity of discontinuing so many trains formerly operating to the Charleston Union

Station, taken together with the evidence as to the inadequate station facilities furnished by the Southern on Line Street since the fire, and the evidence as to the inadequate passenger service rendered by the petitioner by means of its North Station and its shuttle bus service from the station to the City Market (which has no passenger station conveniences of anything like the usual kind), justified the conclusion that the sharp reduction in passenger travel since the fire resulted at least in large part from the fact that the Union Station has been out of service, and that its restoration to service will fill a public need formerly served, which has been forced elsewhere during the period of delay in the resumption of passenger train service to and from the city. The need for the train service exists, and will again be filled by the railroad companies when they resnme suitable and convenient passenger station and train service to the community.

The evidence before the Commission and the State Court showed that Charleston, a city of over 70,000 population, which had enjoyed passenger station and train service at the Charleston Union Station location for approximately 40 years prior to the fire, needs the resumption of that service, and that the public will be convenienced thereby.

The evidence also showed that the Southern's proposed Ann Street Station would tend to perpetuate that company's operations in the heart of the city, and would increase traffic disruption by the operation of passenger trains across heavily travelled city streets not now crossed by passenger trains; and that the proposed North Station service of the petitioner is far less adequate than the public travelling to and from the City of Charleston is entitled to.

The decisions of this Court cited in the opinion of the State Court show that the question in each case such as

the instant one "is whether, in the light of the facts disclosed, the regulation is essentially an unreasonable one," and that the matter of expense is "an important criteria to be taken into view in determining the reasonableness of the order," *Atchison, T. & S. F. Ry. Co. v. Railroad Commission, supra,* 283 U. S. 380, 396. But the fact that the operation will entail losses is not conclusive of the question. *Western & Atlantic Railroad v. Georgia Public Service Commission, supra,* 267 U. S. 493, 496; *Fort Smith Light & Traction Co. v. Bourland et al.,* 267 U. S. 330, 332; *Missouri Pacific Ry. Co. v. Kansas,* 216 U. S. 262, 279; *Chesapeake & Ohio Ry. Co. v. Public Service Commission,* 242 U. S. 603, 607.

The State Court properly held that the petitioner and the Southern Railway Company have franchises which include the duty of furnishing adequate and suitable passenger service and facilities, and "the Constitution does not confer upon the company the right to continue to enjoy the franchise or indeterminate permit and escape from the burdens incident to its use." *Fort Smith Light & Traction Co. v. Bourland et al., supra,* at page 333 of 267 U. S.

In *People of the State of New York ex rel. New York & Queens Gas Co. v. McCall et al., Commissioners,* 245 U. S. 245, 351, this Court observed:

> "Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render."

And it may not be amiss to quote the following from *State ex rel. Railroad & Warehouse Commission v. Northern Pacific Ry. Co.,* 90 Minn. 277, 96 N. W. 81, 82:

"It would seem to be now settled, upon principles of public policy, that the decisive question in such a case should not be the convenience and benefit of railway companies alone. They undoubtedly have a right to consider their own profit and convenience largely, but also owe duties to the public, for which reasons they have been permitted to establish their roads, and enjoy many substantial privileges depending upon benefits which will accrue to patrons adjacent to their lines, and incidental to the obligations thus imposed must be the duty to treat the public fairly, and furnish them with reasonable facilities to enjoy the benefits they confer; hence the discontinuance of an established railway station which their patrons have been permitted to use for years, upon the faith of whose location the people of a village and the surrounding country have depended, cannot be determined solely by the consideration whether a railway station is profitable to the road, nor upon its convenience and the adaptation of its affairs to the increased advantages and methods of transacting its business, nor by the test whether the continuance of a station will require it to incur expense. This wholesome conclusion is supported by authority, and is founded upon equity and reasonable grounds of general utility."

As to the petitioner's contention that the Public Service Commission's order casts an undue burden on interstate commerce, it has already been pointed out that the cost of construction required to comply with the order will not burden the revenues of the two railroad companies, because such cost will not exceed the insurance money received by the Charleston Union Station Company on account of the fire damage.

It has also been pointed out that neither railroad company has made application to any regulatory commission for authority to abandon the station location, or to abandon the operation of their trains thereto and therefrom which were so operating prior to the fire.

As Circuit Judge Parker held in *Southern Ry Co. v. South Carolina Public Service Commission,* 31 F. Supp. 707, 715, 716:

> "Congress dealt with the burden on interstate commerce resulting from state requirements of service by authorizing the abandonment of all service on any line or part of a line, where the Interstate Commerce Commission after giving consideration to the public interest determines. On the principle *expressio unius est exclusio alterius,* this is clear indication not to interfere with the power of the states to require service in cases where there is no abandonment pursuant to the statute. * * * Especially is this true in light of the fact that 'it has become the settled social policy both of the states and the nation to entrust the type of public interest here in question to expert administrative agencies because of "the notion," * * * "That a judge is not qualified for such duties." *Palmer v. Comconwealth of Massachusetts, supra*' ". (308 U. S. 79.)

See also *People of the State of New York ex rel. New York & Queens Gas Co. v. McCall et al., Commissioners, supra,* 245 U. S. 345, 351.

It is respectfully submitted that the holding of the State Court on the evidence that the order of the Public Service Commission was not arbitrary or unreasonable, and that it did not cast an undue burden on interstate commerce, was proper.

Point 3. The provision in the order of the Public Service Commission of South Carolina that passenger train service be inaugurated to and from the restored station merely stated a legal incident of the re-activation of the station after its restoration for use as such.

The petitioner treats the portion of the Public Service Commission's order reading "and thereafter to inaugurate passenger train service thereto and therefrom" (R. 131)

as either an attempt to regulate train operations or as a finding of the need therefor. It clearly is neither.

The trains now operating to and from the petitioner's North Station (some six miles from the City of Charleston), as an interim disposition because of the fire damage to the Charleston Union Station (R. 457), will necessarily resume operation to and from the restored station upon completion of the restoration. No authority to abandon such operations has been obtained or sought by either the petitioner or the Southern Railway Company. Hence the provision that passenger train service be inaugurated to and from the restored station, after its restoration for use as such, merely stated a legal incident of the re-activation of the station.

The State Court so regarded the provision. In its opinion, it is said:

> "The inauguration of train service to and from the restored union station clearly has reference to the trains now in service which used the station at the time of the fire, authority to discontinue the operation of which to the station has not been sought or obtained. What additional amount of train service may be required to use the station after its restoration will depend upon action of the regulatory commissions upon a showing of the necessity for more passenger train service at that point." (R. 144.)

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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January 12, 1953.

Act No. 625, Acts of South Carolina, 1902. (23 S. C. Stats. at Large 1168.)

No. 625

AN ACT to Incorporate the "Charleston Union Station Company."

Whereas a Concurrent Resolution allowing this Bill to be introduced has been passed by a two-thirds vote of each House, as required by the Constitution; now,

Section 1. Be it enacted by the General Assembly of the State of South Carolina: That R. G. Erwin, Samuel Spencer, H. Walters, A. B. Andrews, C. C. Gadsden and W. G. Elliott, and such others as now are or may hereafter be associated with them, and their successors, be, and they hereby are constituted a body politic and corporate by the name and style of "Charleston Union Station Company" for the purpose of constructing, maintaining and operating a Union Passenger Station in the City of Charleston, South Carolina, and to that end to acquire by purchase, lease, condemnation as hereinafter provided, or otherwise, any and all property that may be necessary for the construction, maintenance and operation thereof in said city, and by such name to have all the general powers, and be subject to all the general restrictions, given and imposed by the laws of this State upon railroad corporations.

Sec. 2. That the Capital stock of said company shall not be less than fifty thousand dollars, nor more than two hundred and fifty thousand dollars, and shall be devided into shares of the par value of one hundred dollars each; that the said company may be organized and commence business when the sum of fifty thousand dollars has been subscribed to its capital stock; and the same may be increased from time to time by the stockholders of said company at any meeting thereof, to any amount not exceeding the sum of two hundred and fifty thousand dollars.

Sec. 3. That said company shall have the power to acquire within the City of Charleston, and the County of Charleston, South Carolina, such real estate as may be necessary on which to construct, maintain, and operate a union passenger station, comprising passenger depots, office buildings, sheds, storage rooms and yards; also main and

side tracks, switches, cross-overs, turnouts, bridges and other terminal railroad facilities, appurtenances and accommodations, suitable in size, location and manner of construction, to perform promptly and efficiently the work of receiving, delivering and transferring all passengers, baggage, and mail and express matter of railroad companies using the said station; and shall also have the power of contracting with any or all railroad companies entering the City of Charleston, by lease or otherwise, for the use by said railroad companies of such union station, and all terminal facilities connected therewith. Said corporation shall have power to acquire by purchase, lease, or assignment of lease, such real estate as may be necessary for the purposes of its incorporation, and it shall also have power to acquire for said purposes land or easements therein by condemnation, and shall be entitled to all the rights and privileges embraced in Section 1743 to 1755 of the Revised Statutes of South Carolina of 1893, and all Acts amendatory thereof.

Sec. 4. That whenever it may be necessary in order to enable said corporation to acquire and construct proper railroad facilities in said City of Charleston, South Carolina, or to connect such facilities with the tracks of any railroad company with which said corporation may have contracted to furnish such facilities, said corporation, with the consent of the proper authorities of the said City of Charleston, shall have the right to lay and operate a railroad track or tracks, a bridge or bridges, across, along or over, or under such of the streets of the City of Charleston as may be necessary for that purpose, and said corporation may, also, with such consent, construct such passenger station across or along, over or under, any such street, where it shall be necessary in order to furnish proper railroad terminal facilities in said city; but no street of said city shall be obstructed or interfered with until the consent of the proper authorities of said city shall have been first obtained.

Sec. 5. That as hereinbefore provided, the said corporation may contract by lease or otherwise, with any railroad company or companies for the use of its passenger depot or station, and its other terminal facilities, or any

part thereof; and any railroad company whose railroad enters the City of Charleston, shall have the right to lease from the said corporation the said passenger depot or station, or any part thereof, or to contract for the use of the same, such lease or contract to be made for such time and upon such terms as may be agreed upon by the parties thereto; and such railroad company or companies shall have the right, severally or jointly, or jointly and severally, to guarantee the principal and interest of such bonds as may be issued by the Charleston Union Station Company, and may in like manner guarantee the performance of any other contract whatsoever that such Union Station Company may make in regard to its corporate business; and any such railroad company or companies shall have the right to subscribe to, hold and dispose of, shares of the capital stock of the said Charleston Union Station Company, or the bonds which may be issued by it.

Sec. 6. The said Charleston Union Station Company shall have the right to maintain restaurants, news stands, telegraph and telephone offices, and such other appurtenances as are generally incidental to a union passenger station or to sell or lease such rights to others. ....

Sec. 7. Said corporation shall have the right to issue, negotiate and sell its bonds, either coupon or registered to such an amount or amounts as it may deem necessary, not to exceed the sum of two hundred and fifty thousand dollars, and to cause the same to be secured, by one or more mortgages or deeds of trust, conveying all of its property, rights, privileges and franchises to such trustee or trustees, and on such terms and conditions as it may deem proper.

Sec. 8. This Act shall take effect from and after its approval.

Approved the 20th day of February, A. D. 1902.

Section 2118-3(1), Code of Laws of South Carolina (1942)

§ 2118-3. Rules and regulations adopted pursuant to general and permanent laws.

(1) *Not become effective until certified and filed—number each separately.*—All rules and regulations adopted by

any officer, board, commission, or agency, when authorized to adopt rules and regulations by any general and permanent law of the State of South Carolina, shall become effective only after such rules and regulations shall have been properly certified to by the officer or agency adopting same, and have been filed in the office of the secretary of state. The secretary of state, on receipt of such rules and regulations, shall note on them date filed in this office, and permit the public to inspect them. Each such rule and regulation shall be numbered separately.

Section 8292-12, Code of Laws of South Carolina (1942)

§ 8292-12. Commissioners have general supervision.—The commissioners shall have the general supervision of all railroads and railways, express and telegraph lines in this State operated by steam, and shall examine the same and keep themselves informed as to their condition and the manner in which they are operated with reference to the security and accommodation of the public and the compliance of the several corporations with the provisions of their charters and the laws of the State; and to enforce the provisions of this chapter; and the provisions of this chapter shall apply to all railroads and railways, and to the corporations, trustees, receivers, or others owning or operating the same.

Section 8341, Code of Laws of South Carolina (1942)

§ 8341. Mandamus to require compliance—punishment for disobendience—costs and counsel fees.—If any railroad company shall neglect or refuse to comply with the provisions of this chapter or with the rules and regulations prescribed by said commissioners within the limits of their authority, such company shall be subject to a writ of mandamus, to be issued by any justice of the Supreme Court, or circuit court judge, upon application of the commissioners, or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of mandamus shall be punishable as for contempt; and for any wilful violation of any said laws,

or failure to comply with the requirements of such rules or regulations, the court may award such costs and counsel fees, on the return of said writs, and after due deliberation thereon, as may be just.

Section 8415, Code of Laws of South Carolina (1942)

§ 8415. Public service commissioners may require railroads to erect depots.—The public service commissioners of this State are hereby invested with authority to require all railroads at junctional points and at such other points as the travel and public interest in their judgment shall justify in this State, to erect Union or other depots for the convenience and accommodation of the public, and if any railroad company shall refuse or fail so to do, when required by the said public service commissioners, within the time as specified by them, it shall forfeit and pay a sum of not less than fifty ($50.00) dollars per day after expiration of time as set forth in the order or circular of said public service commission, to be recovered in an action in any county in this State where such violation has occurred, and shall be in the name of the State of South Carolina. The commission shall institute such action through the Attorney General or any of the solicitors of the State. The said public service commissioners shall have the right to fix the time for the erection of depots.

Rule 14 of the South Carolina Public Service Commission, promulgated under Section 8292-12, Code of Laws of South Carolina (1942) and filed in the office of the Secretary of State of South Carolina on June 30, 1937.

Rule No. 14. Closing or discontinuing depots, stations and agencies. Each and every depot, flag stop, station, office and agency, now maintained, conducted or used in South Carolina by any railroad, express or telegraph company doing business in this State, for the transaction of business with the public is hereby formally established and located at the point and on the premises where the same is now being so maintained and conducted. No such depot, flag stop, station or agency, as aforesaid, now established, or that hereafter may be established, pursuant to orders made

by the Commission, or voluntarily by such company, or otherwise, shall be closed, removed, suspended, discontinued or abolished without authority granted by the Public Service Commission. (Written application shall be made to the Public Service Commission for authority to post notice to the public setting further the fact that thirty days from date of said notice application for such closing, removal, suspension, discontinuance or abolition will be made to the Public Service Commission.)* Said notice to the public shall be posted in a conspicuous place at or near such depot, flag stop, station, office or agency, for not less than thirty (30) days, and a copy of such notice sent to the Public Service Commission. At the expiration of that time, unless protest has been received from the public by the Public Service Commission and the company so notified, then formal application may be made to the Public Service Commission for authority to close, remove, suspend, discontinue or abolish such depot, flag stop, station, office or agency, as the case may be. Should protest be received, the Public Service Commission will notify the company involved, who may, if desired, ask for a formal hearing in the matter, and the Commission will order such hearing if, in its judgment, same is necessary.

Rule 45 of the South Carolina Public Service Commission promulgated under Section 8415 of the Code of Laws of South Carolina (1942) and filed in the office of the Secretary of State of South Carolina on June 30, 1937.

Rule No. 45. Erecting depots. All railroads in this State are required to erect within the time specified by the Commission union or other depots at such points as the travel and public interest shall in the judgment of the Commission justify.

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* This sentence omitted through error in the printing of the Code.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 502

ATLANTIC COAST LINE RAILROAD COMPANY,
PETITIONER

v.

THE STATE OF SOUTH CAROLINA EX REL THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, ET AL., RESPONDENTS

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

STATEMENT

This brief is filed by the Interstate Commerce Commission at the court's request to express its views on some of the questions presented by the petition for writ of certiorari herein. The facts show:

The Charleston Union Station Company was incorporated in 1902 by an act of the South Carolina legislature for the purpose of constructing, maintaining and operating a union passenger station in the City of Charleston, S. C. (R. 16). The Union Station Company is owned jointly by the Atlantic Coast Line and the Southern Rail-

way (R. 16). When constructed the station was served directly by the Coast Line over its own tracks and by the Southern Railway, pursuant to a trackage agreement dated January 1, 1907, and a supplemental agreement dated March 8, 1916, between the Coast Line and the Southern under which the Southern operated over the tracks of the Coast Line for a distance of 11,487 feet, so as to serve the union station (R. 503, 514, 587). For 40 years, or until January 10, 1947, the two railroads afforded passenger station facilities to the public at the union station (R. 145).

On January 10, 1947, the station was considerably damaged by fire (R. 586), and after negotiations between the railroads and the State Commission, which failed to result in an agreement looking to the reestablishment of suitable passenger station facilities for the city, its residents, and the traveling public generally, a complaint was filed with the State Public Service Commission, which, after the usual administrative proceedings, on June 14, 1950, ordered the Coast Line and the Southern to rebuild the passenger station in the City of Charleston and to make monthly reports to the State Commission as to the progress of the building operations (R. 584).

Upon review of this order, the Court of Common Pleas of Charleston County sustained the order of the State Commission (R. 584–96), and the Supreme Court of the State affirmed that

decision and adopted the opinion of the lower court as its own (R. 583–84).

Following the January 1947, fire, the trackage agreements of 1907 and 1916 were cancelled as of January 25, 1947 (R. 587), on the ground that the joint use by the Southern of the Coast Line's tracks was no longer necessary (R. 587). The record shows that the Union Station Company received approximately $158,000.00 from insurance sources in settlement of losses sustained in the fire, and that none of this amount has been used to replace any portion of the burned station (R. 587). Since the fire the Coast Line passenger trains now use the company's North Station, about seven miles outside the city, with bus connections to the center of the city, while the Southern has established a temporary passenger station by the use of old passenger cars at Line Street in Charleston (R. 587–588). It was the Southern's proposal to provide its own station on Ann Street for its passenger business (R. 588), but the State Court sustained the findings of the State Commission that such proposal was not satisfactory, in that this location for a station would result in a disruption of traffic and increase the probabilities of accidents (R. 592).

Evidence was introduced by the carriers in the State Court, although apparently not before the State Commission (R. 591), to show that to reproduce the burned building would cost approximately $400,000.00, while the state author-

ities offered evidence in court tending to show that a suitable station could be constructed for something less than the amount of insurance received (R. 591). The lower court construed the Commission's order as not contemplating an exact duplication of the 1907 station (R. 591); sustained the findings of the State Commission as to the inadequacy of the North Station of the Coast Line and the facilities proposed by the Southern (R. 592), and overruled the claim of the railroads that because the Southern now has no access to the station site, it would have to extend its lines to comply with the order of the State Commission, or enter into a new trackage agreement with Coast Line authorizing it to do so; in either event, the claim was, a certificate from the Interstate Commerce Commission is required (R. 589). The lower court orerruled this contention on the ground that the railroads' attempted cancellation of the trackage agreement without authority was invalid and there never had been a lawful termination of that agreement, so no new authorization was required (R. 590).

In answer to the contention of the carriers that the order of the State Commission is a burden on interstate commerce because of the expenditures required to comply therewith, and the losses which they claim will result from the operation of the union station (R. 590), the lower court referred to the "well-settled" rule that the State

"may require railroad companies to provide reasonably adequate and suitable facilities for the convenience of the communities served by them, and that railroads may be compelled by State legislation to establish stations at proper places for the convenience of their patrons, including union stations" (R. 592).

The matter of expense, the Court held, is an important criteria to be taken into account in passing on the reasonableness of the order (R. 592). Such a question, the court said, is for the Interstate Commerce Commission (R. 595). The court concluded that the carriers had not made out a case that the expenditures required would constitute an undue burden on interstate commerce (R. 595).

As a basis for its conclusion, the court below found that the "evidence shows that a suitable station * * * of modern design and construction can be provided on the site of the burned station for not in excess of the amount of insurance received on account of the fire damage." (R. 591–92.) From the judgment of the State Court sustaining the order of the State Commission (R. 596), this petition for writ of certiorari was filed. The petition presents the following questions:

1. Is a certificate of public convenience and necessity required from the Interstate Commerce Commission before the Southern Railway Company can once more, under a trackage agreement,

operate over the line of the Atlantic Coast Line to reach the Charleston Union Station, where such operation had ceased without the approval of the Interstate Commerce Commission?

2. Does the order of the State Commission, because of the expenditures required and the losses it is claimed will result from the operation of the union station, constitute an undue burden on interstate commerce, which can not be imposed by state authority, but only after order by the Interstate Commerce Commission?

ARGUMENT

I

A trackage agreement under which one carrier by railroad engaged in interstate commerce operates over the tracks of another, may not be entered into by the affected carriers, or terminated by them, without an appropriate certificate from the Interstate Commerce Commission

The Transportation Act of 1920 imposed upon the Interstate Commerce Commission new and affirmative duties, the dominant purpose of which was to see that an adequate system of transportation was provided for the people of the United States, instead of the individual case approach, which was the basis of earlier legislation. *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.,* 257 U. S. 563, 584; *Dayton-Goose Creek Ry. Co.* v. *United States,* 263 U. S. 456, 478; *New England Divisions Case,* 261 U. S. 184, 189–190. Among

the new duties imposed upon the Commission by that Act were the requirements of the construction and abandonment provisions, section 1 (18), (19), (20) and (22) (49 U. S. C. sec. 1 (18) et seq.). Section 1 (18) prohibited carriers by railroad from constructing new lines, or extending their old lines, or acquiring or operating any line or extension, without a certificate of public convenience and necessity from the Commission. The same paragraph prohibited the abandonment of all or any portion of a line of railroad, or the operation thereof, without a similar certificate. Section 1 (19) prescribed the procedure to be followed by the carriers and the Commission in such cases, and paragraph (20), among other things, provided penalties for violations of the paragraph, and injunction proceedings to compel compliance therewith. At the time this law became effective, many railroads operated segments of their lines under lease or by reason of trackage agreements with owning carriers. Many of these agreements had been entered into prior to the pertinent provisions of section 1; many more were attempted to be supplemented by new arrangements to be effected after the date of enactment, and some, having a definite term of years, expired after section 1 (18) was enacted. Questions soon arose in Commission proceedings whether trackage arrangements between carriers were subject to its jurisdiction and whether such arrangements could

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be supplemented or terminated after the act's effective date without Commission approval.

An early case was *Chicago & Alton R. Co.* v. *T., P. & W. Ry. Co.,* 146 I. C. C. 171, (1928) where one of the parties to a trackage agreement under which the Alton had been operating over the tracks of the owning company, the T. P. & W., for many years, sought to cancel the agreement. The Commission said that while it never considered the precise question here presented (p. 180), and although there is no express reference in paragraphs (18) and (20) of Section 1 covering the extension or withdrawal of operations under lease, the Commission held it had jurisdiction over the abandonment of the *operation* of the railroad under a trackage agreement just as it had over the inception of such an arrangement (p. 181). Operations under trackage rights cannot lawfully be discontinued, the Commission concluded, without a certificate from it (p. 182). (See also *Gulf, Mobile & Ohio R. Co. Purchase, Securities,* 261 I. C. C. 405, 431–432; *Fort Worth & Denver City Ry. Co. Trackage,* 170 I. C. C. 677; *Lehigh Valley R. Co. Abandonment of Operation,* 202 I. C. C. 659). In *Pooling of Ore Traffic in Wisconsin and Michigan,* 210 I. C. C. 599, the Milwaukee had transported iron ore for a number of years over the rails of the Escanaba and Lake Superior Railroad, under a long-term trackage agreement. New arrangements for the haul-

ing of this ore were made, so the use of the tracks of the Escanaba became unnecessary. The Commission held that the Milwaukee could not lawfully abandon operation over the rails of the Escanaba without a certificate from it. Ever since its decision in the *Chicago & Alton case, supra,* the Commission has advised carriers that operations under trackage rights may not be abandoned without a certificate obtained under section 1 (18). This construction of the Act by the Commission has received the approval of this Court. In *Transit Commission* v. *United States,* 289 U. S. 121, 128, this Court held that the reasons for the exercise of paramount federal authority are just as applicable to expenditures made through construction or operation of new mileage as they are to inadequate rentals or extortionate exactions under trackage agreements, and concluded: "The provisions of paragraph (18) undoubtedly apply to the operations under trackage agreements such as that under consideration." (p. 129) And in *Thompson* v. *Texas Mexican R. Co.,* 328 U. S. 134, 144–145, this Court said: "Section 1 (18) embraces operations under trackage contracts, as well as other types of operations. * * * Though the contract were terminated pursuant to its terms, a certificate would still be required under § 1 (18)."

Since the enactment of the Transportation Act of 1940, the jurisdiction of the Commission over

the acquisition of trackage rights has been under section 5 (2) (a) (ii) and not under section 1 (18). Section 5 (2) (a) (ii) reads as follows:

> "It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—
>
> (ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto."

In *Chicago, B. & Q. R. Co. Control,* 271 I. C. C. 63, 67, the Commission pointed out that the legislative history of the provisions of section 5 (2) relating to trackage rights, added by the Transportation Act of 1940, shows that it was the intent of Congress to transfer the Commission's jurisdiction over acquisition of trackage rights from section 1 (18)–(20) to section 5 (2).

In *International-Great Northern R. Co. Trustee Trackage Rights,* 275 I. C. C. 27, 33, the Commission held that as the transaction relates to operations by applicant over a track already in place and operated by another carrier, it is governed by section 5 (2) and not section 1 (18).

In *Missouri Pac. R. Corp. in Nebraska Trustee Operation,* 247 I. C. C. 653, the Commission approved section 5 (2) applications wherein two carriers sought separate authorities to operate under trackage rights over short distances on the tracks of another carrier. The Commission

declined to approve one of the terms of the trackage agreements, the purport of which would authorize the carriers to withdraw from the agreement on notice, the Commission saying:

> "Our approval of the proposed transactions herein, * * * will be contingent upon a proper showing being made at the time the agreement is to be terminated that the public convenience and necessity at that time permit abandonment of the operations authorized herein."
> (p. 656)

It is the view of the Interstate Commerce Commission that as the Southern Railway Company never was legally released from the provisions of the trackage agreement under which it operated over a portion of the line of the Atlantic Coast Line to reach the Charleston union station, such agreement continues in force and effect and it is unnecessary at this time to secure the Commission's approval of the terms of such agreement.

II

In the absence of rearrangement and relocation of interstate railroad tracks, involving the abandoment of old lines and the construction of new lines, and where as here there is no issue of undue prejudice or preference, the Interstate Commerce Commission has no jurisdiction to require the construction of union passenger stations

In *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, decided July 6, 1925, the Commission found that it had no jurisdiction to require

the construction of union passenger stations where there is no issue of undue prejudice or preference, and the providing of the union station and appurtenances constitutes the major consideration, and the rearrangement, relocation or joint use of the main line and terminal tracks is incidental thereto. In *Oklahoma Corp. Commission* v. *A., T. & S. F. Ry. Co.,* 142 I. C. C. 251, involving the construction of a new union station in Oklahoma City, the Commission found that "neither the added operating costs nor the capital outlay necessitated by the new construction will impair the ability of the applicants to perform their other duties to the public." (p. 254.) In *Railroad Comm.* v. *Southern Pac. Co.,* 264 U. S. 331, this Court held that "Such a certificate [of public convenience and necessity] is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals." (p. 344.) In *Oklahoma Corp. Commission* v. *A., T. & S. F. Ry. Co.,* 101 I. C. C. 647 (1925) the Commission held that it may be possible to construct a new station at Oklahoma City adequate to serve the needs of the public at a cost less than estimated, but it did not consider it its duty under the law to make independent investigations in order to determine the feasibility and lawfulness of undefined plans. (p. 652.) It held (p. 655), that "in determining

whether such public convenience and necessity exists as will justify an affirmative finding we must weigh the amount of convenience which would result from the union station against the probable cost of the project to the defendant railroads."

When the Commission's decisions in *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421 and 142 I. C. C. 489, came before this Court for review in *I. C. C.* v. *City of Los Angeles,* 280 U. S. 52, involving the construction of a new union station at a new site in Los Angeles, the Court sustained the Commission's conclusion that it did not have jurisdiction to order construction of the station. The Court said (at p. 68) that if the Commission "was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation." And the Court said (p. 69), "To attribute to Congress an intention to authorize the compulsory establishment of union passenger stations the country over, without special mention of them as such, would be most extraordinary." After the State Commission subsequently issued an order requiring the railroads serving Los Angeles to erect a new union station in that city, the order was sustained in *A., T. & S. F. Ry. Co.* v. *Railroad Commission of California,* 283 U. S.

380 (1931). The Court in that case held (p. 395) that "Railroad carriers may be compelled by state legislation to establish stations at proper places for the convenience of their patrons * * *. The question in each case is whether, in the light of the facts disclosed, the regulation is essentially an unreasonable one * * * And 'the matter of expense is an important criterion to be taken into view in determining the reasonableness of the order.'" (p. 396.)

As no relocation of tracks is necessary in the case now before this Court, to comply with the order of the State Commission, no approval by the Interstate Commerce Commission was necessary before the railroads could be ordered by the State Commission to construct the station at Charleston.

III

There is no evidence to justify a finding that the expense to the carriers of complying with the order of the State Commission would place such an undue burden upon interstate carriers as would prevent them from performing their duties to the public

In *Railroad Commission* v. *Southern Pacific Company, supra,* this Court recognized that exercise by a State Commission of the power to direct the construction of local union stations might involve such an unreasonable demand upon the carriers or place such an undue burden upon interstate commerce to the impairment of their ability to perform their duties to the public, that

a finding by the Commission is required that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public. (p. 347.)

We do not think the instant case comes under that holding. The lower court had in mind that the matter of expense is an important criteria to be taken into account in passing upon the reasonableness of the order (R. 592), and the fact that such an expense might be claimed to be such an unreasonable one as to make it a matter for the Interstate Commerce Commission (R. 595). Apparently the railroads did not introduce any evidence before the State Commission concerning the cost of reconstructing the burned station (R. 591). Although they did introduce evidence in the State Court to show that reproducing the burned building would cost approximately $400,000.00, the State authorities offered evidence in the lower court tending to show that a suitable station could be constructed for something less than the amount received for insurance. (R. 591). The lower court construed the order of the State Commission as not contemplating an exact duplication of the old station (R. 591) and found that the "evidence shows that a suitable station * * * of modern design and construction can be provided on the site of the burned station for not in excess of the amount of insurance received on account of the fire damage." (R. 591–592). There is

nothing in this record from which the Interstate Commerce Commission can conclude that to require the railroads to spend even the maximum named by them as the cost of rebuilding of $400,000.00 (from which sum $158,000.00 collected as insurance as a result of the fire should be deducted) would place an undue burden on these carriers or on interstate commerce. We view this case as falling within the well-settled principle referred to by this Court in *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761, 767, as follows:

> "* * * When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority. * * *."

Respectfully submitted,

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